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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,706	01/02/2004	Gary T. Roe	4017M	3804

7590 06/23/2004

S. Michael Bender
P.O. Box 530399
St. Petersburg, FL 33747

EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,706

Applicant(s)

ROE ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/2/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This is the first office action for application number 10/750,706, Portable Beverage Holder, filed on January 2, 2004.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The disclosure is objected to because of the following informality: the period after "16" on page 11, line 9 should be a comma.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said clamp assembly" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,734,439 to Wintz. Wintz discloses a portable beverage holder apparatus comprising: clamping means (27); a hanger member (20); clamp-to-hanger hinge means (32 & 34) connected between the clamping means and the hanger member; a cup unit (13); hanger-to-cup hinge means (@18) connected between the hanger member and the cup unit; wherein the clamp-to-hanger hinge means include a clamp-to-hanger hinge assembly; wherein the clamp-to-hanger hinge assembly includes a top hanger reception channel (34) in the clamping means and a top hanger portion (32) in the hanger member, wherein the top hanger portion is received in the top hanger reception channel; and wherein the hanger-to-cup hinge means include a hanger-to-cup hinge assembly.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,887,784 to Kayali. Kayali discloses a portable beverage holder apparatus comprising: clamping means (300); a hanger member (215); clamp-to-hanger hinge means (235) connected between the clamping means and the hanger member; a cup

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unit (100); hanger-to-cup hinge means (225) connected between the hanger member and the cup unit; wherein the clamping means include a spring clamp assembly; wherein the spring clamp assembly includes grasping portions (310), clamping portions (330), and a spring (not shown) for urging the clamping portions towards each other; wherein the clamp-to-hanger hinge means include a clamp-to-hanger hinge assembly; wherein the clamp-to-hanger hinge assembly includes a top hanger reception channel in the clamping means and a top hanger portion in the hanger member, wherein the top hanger portion is received in the top hanger reception channel; and wherein the hanger-to-cup hinge means include a hanger-to-cup hinge assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wintz in view of U.S. Patent 2,127,607 to Levow. Wintz further discloses that the cup unit has free end portions (18) and hanger reception channels in the hanger, wherein the free-end portions are received in the hanger-reception channels. Wintz discloses the claimed invention except for the limitation of the hanger including the free-end portions and the cup unit including the hanger-reception channels. Levow teaches a container unit for being supported by a looped opening adapted to receive a cylindrical element such as a

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rod, pin or fastener, a hanger (D) having free-end portions and a unit having hanger-reception channels (19). It would have been obvious to one having ordinary skill in the art the time the invention was made to have modified the hanger and unit in Wintz to have included the hanger and unit as taught by Levow for the purpose of providing an alternative arrangement of the holder apparatus, wherein the modification is merely a reversal of parts.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wintz combined with Levow and further in view of U.S. Patent 6,425,562 to Knudson. Wintz combined with Levow disclose the claimed invention except for the limitation of a plurality of washers. Knudson teach that it is known to have a holder including a hanger (14 & 16) attached to a connector (12) by a hinge means and free-ends of the hinge means having a washer (24) disposed thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the holder apparatus in Wintz combined with Levow to have included inside and outside washers on the free-end portions of the hanger for the purpose of providing a means for reducing the friction and wear and tear resulting from the constant pivotal motion between the free end portions of the hanger and the cup unit.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,926,879 to Dietrich

U.S. Patent 3,045,962 to Paulus

U.S. Patent 3,269,683 to Shinaver

U.S. Patent 5,190,257 to Gradei et al.

U.S. Patent 5,484,129 to Megal

U.S. Patent 6,325,350 to Mancuso

Dietrich discloses a tumbler holder having a hinge means. Paulus discloses a glass holder with a gimbal mounting. Shinaver discloses a carrier attachment for an open top container. Gradei et al. disclose a beverage container holder. Megal discloses a beverage container holder. Mancuso discloses a pendulous pivotable cup holder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
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June 14, 2004